United Nations A/C.3/71/L.28

General Assembly

Distr.: Limited
31 October 2016

Original: English

Seventy-first session

Third Committee

Agenda Item 68 (b)

Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Austria, Belgium, Brazil, Bulgaria, Chile, Costa Rica, Cyprus, Gambia, Germany, Hungary, Iceland, Liechtenstein, Lithuania, Luxembourg, Mongolia, Netherlands, Norway, Slovenia, Spain, Switzerland and Ukraine: draft resolution

Human rights in the administration of justice

The General Assembly,

Bearing in mind the principles of the Universal Declaration of Human Rights[1] and the provisions of the International Covenant on Civil and Political Rights and the Optional Protocols thereto,[2] the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol thereto,[3] the International Convention for the Protection of All Persons from Enforced Disappearance,[4] the Convention on the Elimination of All Forms of Discrimination against Women,[5] the Convention on the Rights of the Child,[6] and the International Covenant on Economic, Social and Cultural Rights,[7] as well as all other relevant international treaties,

Calling attention to the numerous international standards in the field of the administration of justice,

Recalling all the resolutions of the General Assembly, the Human Rights Council, the Commission on Human Rights and the Economic and Social Council that are relevant to the subject of human rights in the administration of justice,

[1] Resolution 217 A (III).
[2] See resolution 2200 A (XXI), annex; and United Nations, *Treaty Series*, vol. 1642, No. 14668.
[3] United Nations, *Treaty Series*, vols. 1465 and 2375, No. 24841.
[4] Resolution 61/177, annex.
[5] United Nations, *Treaty Series*, vol. 1249, No. 20378.
[6] Ibid., vol. 1577, No. 27531.
[7] See resolution 2200 A (XXI), annex.

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including General Assembly resolution 69/172 of 18 December 2014 and Human Rights Council resolution 30/7 of 1 October 2015,

Noting with appreciation the report of the Secretary-General on strengthening and coordinating United Nations rule of law activities,[8]

Welcoming the adoption of the revised United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules),[9]

Reaffirming the importance of international standards and norms in crime prevention and criminal justice, including in relation to drug-related crimes, as recognized by Member States in the outcome document of the thirtieth special session of the General Assembly, entitled "Our joint commitment to effectively addressing and countering the world drug problem",[10]

Welcoming the work of all special procedures of the Human Rights Council that address human rights in the administration of justice in the discharge of their mandates,

Taking note of the work of all human rights treaty body mechanisms on human rights in the administration of justice, in particular of general comments No. 21 on the humane treatment of persons deprived of their liberty,[11] No. 32 on the right to equality before courts and tribunals and to a fair trial,[12] and No. 35 on liberty and security of persons, adopted by the Human Rights Committee, and general comments No. 10 on children's rights in juvenile justice[13] and No. 13 on the right of the child to freedom from all forms of violence,[14] adopted by the Committee on the Rights of the Child,

Noting with appreciation the important work in the field of the administration of justice of the United Nations Office on Drugs and Crime, the Office of the United Nations High Commissioner for Human Rights, the United Nations Development Programme, the United Nations Children's Fund, the Department of Peacekeeping Operations of the Secretariat and the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) as well as the work of the Special Representative of the Secretary-General on Violence against Children and the Special Representative of the Secretary-General for Children and Armed Conflict,

Noting with appreciation also the thematic report of the Special Representative of the Secretary-General on Violence against Children entitled *Safeguarding the Rights of Girls in the Criminal Justice System: Preventing Violence, Stigmatization and Deprivation of Liberty*, the report of the Special Rapporteur on minority issues concerning minorities in the criminal justice system[15]

[8] A/71/169.
[9] Resolution 70/175, annex.
[10] Resolution S-30/1.
[11] *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40* (A/47/40), annex VI.B.
[12] Ibid., *Sixty-second Session, Supplement No. 40* (A/62/40), vol. I, annex VI.
[13] Ibid., *Sixty-third Session, Supplement No. 41* (A/63/41), annex IV.
[14] Ibid., *Sixty-seventh Session, Supplement No. 41* (A/67/41), annex V.
[15] A/70/212.

and the interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment,[16]

Noting with satisfaction the work of the Interagency Panel on Juvenile Justice and of its members,

Encouraging continued regional and cross-regional efforts, the sharing of best practices and the provision of technical assistance in the field of juvenile justice, welcoming in this regard the holding of the World Congress on Juvenile Justice in Geneva, from 26 to 30 January 2015, and noting with interest its final declaration,

Convinced that the independence and impartiality of the judiciary and the integrity of the judicial system as well as an independent legal profession are essential prerequisites for the protection of human rights, the rule of law, good governance and democracy and for ensuring that there is no discrimination in the administration of justice and should therefore be respected in all circumstances,

Recalling that every State should provide an effective framework of remedies to redress human rights grievances or violations,

Emphasizing that the right to access to justice for all forms an important basis for strengthening the rule of law through the administration of justice,

Welcoming the inclusion in Sustainable Development Goal 16, on the promotion of just, peaceful and inclusive societies, of the target to promote the rule of law at the national and international levels and to ensure equal access to justice for all,

Mindful of the importance of ensuring respect for the rule of law and human rights in the administration of justice as a crucial contribution to building peace and justice and ending impunity,

Recognizing the importance of the principle that, except for those lawful limitations that are demonstrably necessitated by the fact of incarceration, persons deprived of their liberty shall retain their non-derogable human rights and all other human rights and fundamental freedoms,

Concerned about the negative impact of overincarceration and overcrowding on the enjoyment of human rights, and acknowledging that overincarceration constitutes one of the major underlying causes of overcrowding,

Recalling that the social rehabilitation and reintegration of persons deprived of their liberty shall be among the essential aims of the criminal justice system, ensuring, as far as possible, that offenders are able to lead a law-abiding and self-supporting life upon their return to society,

Recognizing the need for Governments to take measures, within the justice system, particularly the criminal justice system, to prevent discrimination against persons belonging to national or ethnic, religious and linguistic minorities and to increase the effective participation of minorities within the system,

Aware of the need for special vigilance with regard to the specific situation of children, juveniles and women in the administration of justice, in particular while

[16] A/71/298.

they are deprived of their liberty, and their vulnerability to various forms of violence, abuse, injustice and humiliation,

Reaffirming that children who are victims and witnesses of crime and violence are particularly vulnerable and require special protection, assistance and support appropriate to their age, level of maturity and needs, in order to prevent further hardship and trauma that may result from their participation in the criminal justice process,

Recognizing the specific situation and needs of children formerly associated with armed forces or armed groups when accused of crimes under international law allegedly committed while they were associated with armed forces or armed groups,

Reaffirming that the best interests of the child shall be a primary consideration in all decisions concerning the child in the administration of justice, including in relation to pretrial measures, as well as being an important consideration in all matters concerning the child related to sentencing of his or her parents, or, where applicable, legal guardians or primary caregivers,

1. *Welcomes* the most recent report of the Secretary-General on human rights in the administration of justice;[17]

2. *Takes note with appreciation* of the reports of the United Nations High Commissioner for Human Rights on the protection of human rights of juveniles deprived of their liberty,[18] on access to justice for children[19] and on the human rights implications of overincarceration and overcrowding[20] and the joint report of the Office of the United Nations High Commissioner for Human Rights, the United Nations Office on Drugs and Crime and the Special Representative of the Secretary-General on Violence against Children on prevention of and responses to violence against children within the juvenile justice system,[21] submitted to the Human Rights Council;

3. *Reaffirms* the importance of the full and effective implementation of all United Nations standards on human rights in the administration of justice;

4. *Invites* States to assess their national legislation and practice in accordance with those standards, including the revised United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules);

5. *Also invites* States to make use of technical assistance offered by the relevant United Nations entities and programmes in order to strengthen national capacities and infrastructures in the field of the administration of justice;

6. *Appeals* to Governments to include, in their national development plans, the effective administration of justice and equal access to justice as an integral part of the development process, with a view to promoting and protecting human rights, and to allocate adequate resources for the provision of legal aid services, and invites the international community to respond favourably to requests for financial and

[17] A/71/405.
[18] A/HRC/21/26.
[19] A/HRC/25/35 and Add.1 and A/HRC/27/25.
[20] A/HRC/30/19.
[21] A/HRC/21/25.

technical assistance for the enhancement and strengthening of the administration of justice;

7. *Stresses* the special need for national capacity-building in the field of the administration of justice, in particular through reform of the judiciary, the police and the penal system, as well as juvenile justice reform, and through the encouragement of independence, accountability and transparency in the judiciary, in order to establish and maintain stable societies and the rule of law in post-conflict situations, and welcomes the role of the Office of the High Commissioner in supporting the establishment and functioning of transitional justice mechanisms in post-conflict situations;

8. *Reaffirms* that no one should be unlawfully or arbitrarily deprived of his or her liberty, and notes the principles of necessity and proportionality in this regard;

9. *Calls upon* States to apply individual criminal responsibility and to refrain from detaining persons based solely on their family ties with an alleged offender;

10. *Also calls upon* States to ensure that anyone who is deprived of his or her liberty through arrest or detention has prompt access to a competent court with the effective power to determine the lawfulness of the detention and to order release if the detention or imprisonment is determined not to be lawful and prompt access to legal counsel, in accordance with their international obligations and commitments;

11. *Urges* all States to consider establishing, maintaining or enhancing independent mechanisms with the mandate to monitor all places of detention, including by making unannounced visits, and to hold private interviews without witnesses with all persons deprived of liberty, in line with the revised United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules);

12. *Affirms* that States must ensure that any measure taken to combat terrorism, including in the administration of justice, complies with their obligations under international law, in particular international human rights, refugee and humanitarian law;

13. *Recalls* the absolute prohibition of torture in international law, and calls upon States to address and prevent the detention conditions, treatment and punishment of persons deprived of their liberty that amount to cruel, inhuman or degrading treatment or punishment;

14. *Calls upon* States to investigate promptly, effectively and impartially all alleged human rights violations suffered by persons deprived of their liberty, in particular cases involving death, torture and cruel, inhuman or degrading treatment or punishment, to provide effective remedies to the victims, in accordance with their international obligations and commitments and to ensure that detention administrations fully cooperate with the investigating authority and preserve all evidence;

15. *Urges* States to endeavour to reduce, where appropriate, pretrial detention, which should be a measure of last resort and for as short a period as possible by, inter alia, adopting legislative and administrative measures and policies on its preconditions, limitations, duration and alternatives and by taking measures

aimed at the implementation of existing legislation, as well as by ensuring access to justice and legal advice and assistance;

16. *Encourages* States to address overcrowding in detention facilities by taking effective measures, including through enhancing the availability and use of alternatives to pretrial detention and custodial sentences in line with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)[22] and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules),[23] access to legal aid, mechanisms for crime prevention, early release and rehabilitation programmes and the efficiency as well as the capacity of the criminal justice system and its facilities in line with the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems,[24] and encourages States to make use, inter alia, of the United Nations Office on Drugs and Crime *Handbook on Strategies to Reduce Overcrowding in Prisons* in this regard;

17. *Calls upon* States to review penal policies that can contribute to overincarceration and overcrowding, in particular regarding so called "zero-tolerance policies", such as the application of mandatory pretrial detention and mandatory minimum sentences especially for minor and or non-violent crimes;

18. *Continues to encourage* States to pay due attention to the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);

19. *Recognizes* that every child and juvenile alleged as, accused of or recognized as having infringed the law, particularly those who are deprived of their liberty, as well as child victims and witnesses of crimes, should be treated in a manner consistent with his or her rights, dignity and needs, in accordance with international law, bearing in mind relevant international standards on human rights in the administration of justice, taking into account also the age, gender, social circumstances and development needs of such children, and calls upon States parties to the Convention on the Rights of the Child[6] and States parties to the Optional Protocols to the Convention[25] to abide strictly by its principles and provisions;

20. *Reiterates the importance of* the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice,[26] and urges States to consider applying them, as appropriate, in the design, implementation, monitoring and evaluation of laws, policies, programmes, budgets and mechanisms aimed at eliminating violence against children in the field of crime prevention and criminal justice;

21. *Recalls* its resolution 69/157 of 18 December 2014, in which it invited the Secretary General to commission an in-depth global study on children deprived of liberty, to be funded through voluntary contributions, and in this regard encourages Member States, United Nations agencies, funds, programmes and

[22] Resolution 45/110, annex.
[23] Resolution 65/229, annex.
[24] Resolution 67/187, annex.
[25] United Nations, *Treaty Series*, vols. 2171 and 2173, No. 27531, and resolution 66/138, annex.
[26] Resolution 69/194, annex.

offices, as well as other relevant stakeholders, to support the elaboration of the study;

22. *Welcomes* the regional conference on oversight, inspection and monitoring of places where children are deprived of liberty in the framework of the criminal justice system organized in Buenos Aires on 19 and 20 May 2016 by the Special Representative of the Secretary-General on Violence against Children and the United Nations Children's Fund, and the important recommendations that have been put forward;

23. *Encourages* States that have not yet integrated children's issues into their overall rule of law efforts to do so and to develop and implement a comprehensive and coordinated juvenile justice policy to prevent and address juvenile delinquency and to address risks and causes for children's contact with the juvenile and/or criminal justice system, as well as with a view to promoting, inter alia, the use of alternative measures, such as diversion and restorative justice, and complying with the principle that deprivation of liberty of children should be used only as a measure of last resort and for the shortest appropriate period of time, as well as to avoid, wherever possible, the use of pretrial detention for children;

24. *Stresses* the importance of including reintegration strategies for former child offenders in juvenile justice policies, in particular through the provision of gender-sensitive education and life skills programmes, as well as treatment and services for substance abuse and mental health needs, with a view to their assuming a constructive role in society;

25. *Urges* States to take all necessary and effective measures, including legal reform where appropriate, to prevent and respond to all forms of violence against children within the justice system, including within the informal justice system, where it exists;

26. *Also urges* States to ensure that, under their legislation and practice, neither capital punishment nor life imprisonment without the possibility of release nor corporal punishment is imposed for offences committed by persons under 18 years of age, and encourages States to consider repealing all other forms of life imprisonment for offences committed by persons under 18 years of age;

27. *Encourages* States not to set the minimum age of criminal responsibility at too low an age level, bearing in mind the emotional, mental and intellectual maturity of the child, and in this respect notes the recommendation of the Committee on the Rights of the Child to increase the lower minimum age of criminal responsibility to the age of 12 years as the absolute minimum age, and to continue to increase it to a higher age level;[12]

28. *Also encourages* States to gather relevant information, including through data collection and research, concerning children within their criminal justice systems so as to improve their administration of justice, while being mindful of the children's right to privacy, with full respect for relevant international human rights instruments, and bearing in mind applicable international standards on human rights in the administration of justice;

29. *Stresses* the importance of paying greater attention to the impact on children of imprisonment or other sentences imposed upon their parents, while

noting with interest the convening of and reports on all relevant meetings and panel discussions on these issues held by the Human Rights Council,[27]

30. *Invites* Governments to provide for tailored and interdisciplinary human rights training, including anti-racist, multicultural, gender-sensitive and child rights training, to all judges, lawyers, prosecutors, social workers, immigration and police officers and other professionals concerned, including personnel deployed in international field presences;

31. *Invites* States, upon their request, to benefit from technical advice and assistance provided by the relevant United Nations entities and programmes in order to strengthen national capacities and infrastructures in the field of the administration of justice;

32. *Invites* the Office of the High Commissioner and the United Nations Office on Drugs and Crime to reinforce, within their respective mandates, their activities relating to national capacity-building in the field of the administration of justice, in particular in post-conflict situations, and in this context to strengthen cooperation with relevant United Nations entities;

33. *Underlines* the importance of rebuilding and strengthening structures for the administration of justice and of respecting the rule of law and human rights, including in post-conflict situations, as a crucial contribution to building peace and justice and ending impunity, and in this respect requests the Secretary-General to further streamline and strengthen system-wide coordination and coherence of programmes and activities of the relevant parts of the United Nations system, including through the Rule of Law Coordination and Resource Group chaired by the Deputy Secretary-General, the Rule of Law Unit in the Executive Office of the Secretary-General and the joint global focal point for the police, justice and corrections areas in the rule of law in post-conflict and other crisis situations;

34. *Invites* States, in the context of the universal periodic review mechanism and in their reports under international human rights treaties, to consider addressing the promotion and protection of human rights in the administration of justice;

35. *Invites* relevant special procedure mandate holders of the Human Rights Council, as well as relevant treaty bodies, to give special attention to questions relating to the effective protection of human rights in the administration of justice, and to provide, wherever appropriate, specific recommendations in this regard, including proposals for advisory services and technical assistance measures;

36. *Requests* the Secretary-General to submit to the General Assembly at its seventy-third session a report on the latest developments, challenges and good practices in human rights in the administration of justice, on efforts to ensure equal access to justice for all through the independent, impartial and effective administration of justice and on the activities undertaken by the United Nations system as a whole;

37. *Decides* to continue its consideration of the question of human rights in the administration of justice at its seventy-third session under the item entitled "Promotion and protection of human rights".

[27] A/HRC/21/31 and A/HRC/25/33.